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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 1124 of 1987 (O&M)
Date of Decision : Oct. 24, 2006

M/s Bhagat Ram Kanhiya Lal and others

... Appellants

Versus

Shri Mohinder Singh and others.

.. Respondents

CORAM : Hon`ble Mr. Justice Pritam Pal.

Present : Shri B.S.Guliani, Advocate,
for the appellants.

Shri Inderjit Sharma, Advocate,
for respondent No. 3 -Insuance Company/
Objector.

PRITAM PAL, J.

F.A.O. No. 1124 of 1987 filed by the claimants and Cross Objections No. 26-CII of 1988 filed by the Insurer/respondent No.3 are being disposed of by this common judgment as both pertain to one and the same award dated 3.8.1987.

The claimants have filed FAO No. 1124 of 1987 for enhancement, against award dated 3.8.1987, whereby, a total compensation of Rs. 8,695/- was granted to them, together with interest at the rate of 12% per annum, from the date of filing of the claim petition till realization. Out

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of this total amount, the liability of the insurer was fastened to the extent of Rs.6,000/-, whereas, the remaining amount was ordered to be paid by the owner and driver of the offending vehicle.

The Insurer-respondent No.3 has also filed Cross Objections No. 26-CII of 1988 against the aforesaid award, challenging the jurisdiction of the Motor Accident Claims Tribunal.

Without going into the details, suffice it to say that on 24.8.1984, at about 8.00 PM, a truck bearing No. HRS 3600, loaded with 100 bags of sugar, driven by respondent No.1, Mohinder Singh, had reached near village Chhara in the area of Police Station, Sampla, District Rohtak. On the road, there was a cut to divert water from one side to the another. The driver of the truck chose to cross the drain while driving rashly and negligently. So, while crossing the drain, the truck fell on its right side, as a result of which, the sugar bags fell-down into the water of the said drain. As such, damage was caused to the sugar contained in the bags. In all, the claimants had sought a total compensation of Rs. 33,716-59 ps. on account of loss caused to the sugar.

Respondents, in their reply, had denied the allegations of the claimants. However, it was admitted that some damage was caused to sugar contained in 10 bags which was loaded in the truck. It was also specifically stated that the truck had not turned-turtle, but the same had tilted on one side. The insurer specifically stated that its liability is limited to Rs.6,000/- only in case of damage of third party.

On the pleadings of the parties, the following issues were framed :-

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"1. Whether the accident had taken place due to rash and negligent act of respondent No.1 Mohinder Singh?

2. What is the amount of compensation, the petitioners are entitled to and from whom?

3. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties?

4. Whether the petition is not maintainable?

5. Whether the respondent No.1 was not holding any valid licence and if so, to what effect?

6. Whether the respondent No.1 was not under the employment of respondent No.2, if so, to what effect?

7. Relief."

After discussing the aforesaid issues, the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the Tribunal") had passed the impugned award, as stated in the earlier part of this judgment.

Now, the only plea of the appellant-claimant in this appeal is that the amount of compensation, awarded by the learned Tribunal, is on the lesser side, and as such, the same deserves to be increased.

I have gone through the impugned award and the evidence led in that behalf by the parties. Admittedly, there is no documentary evidence on the file, which could show that there were 100 bags of sugar loaded in the truck. Jai Parkash, *Muneem,* who appeared as AW-2, has also not been able to give the details of the damaged sugar-bags in the Police Station, Sampla, (District Rohtak) while lodging the report, i.e. D.D.R. No. 22 dated 30.8.1984 (Ex. R/1). Moreover, the police also did not find the allegations levelled by the eye-witness to be true and ultimately, no action was taken by the Police on report Ex. R/1 lodged by this aforesaid witness. Not only

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that, one Dhare, resident of village Chhara, who had arrived at the spot, immediately after the accident and helped in shifting the sugar bags in another truck, has not been examined for the reasons best known to the appellants. I have also gone through the appellants' evidence pertaining to the damage caused to sugar and the same does not appear to be in consonance with their pleadings.

There is also no evidence on the file to show if any of the bags of sugar were torn and thus the sugar had spread in the water or on the ground. The allegation of the appellants that all the 100 bags had fallen in the water, does not appear to be true, inasmuch as, the offending truck is only proved to have tilted on one side, while crossing the drain. In such a situation, it is highly impossible that all the bags of sugar loaded in the truck would fall in the water. The Tribunal has already granted the compensation taking the damage to have been caused to 15 bags of sugar, alongwith other expenses, as referred to in paragraph 6 of the award, while discussing issue No.2.

In this view of my foregoing discussion, the amount of compensation awarded to the appellants is held to be quite reasonable and justified.

Now, adverting to the Cross Objections No. 26-CII of 1988, filed by the Insurer, in this regard, it is suffice to say that the learned counsel for the respondent-Insurer, failed to point out anything on the file to show that the learned Tribunal had no jurisdiction to try the claim-petition, filed by the claimant-appellants. Accordingly, the same are held to be devoid of any merit.

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In the result, F.A.O. No. 1124 of 1987 filed by the claimants-appellants and the Cross Objections No. 26-CII of 1988 filed by the Insurer/respondent No.3 are dismissed. No costs.

[PRITAM PAL]
JUDGE

October 24,2006
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